

EXHIBIT P

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

)
IN RE ALTA MESA RESOURCES,)
) Case No.
INC. SECURITIES LITIGATION)
-----) 4:19-cv-00957

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VIDEOTAPED DEPOSITION OF
CHARLES WHITEHEAD
November 17, 2023
9:12 a.m.

Via Zoom Remote Conferencing

Reported by: Marsi Koehl, CCR-B-2424

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1 A. Really, I think it's in encapsulated in
2 paragraph 42, which says that: Below I summarize the
3 data and methodology used to perform this report's
4 empirical analysis of the sample de-SPACs.

5 And that's what -- that's what we're doing
6 here. So we're summarizing the data that we looked
7 at and the methodology by which we then assess the
8 data.

9 Q. And why did you perform an empirical study?

10 A. I'm not sure I follow the question. I'm
11 sorry.

12 Q. My question is this: Why did you do an
13 empirical study?

14 A. As -- as opposed to?

15 Q. Oh, well, why don't we compare it to what
16 you offered in Twitter. You basically gave similar
17 opinions in the Twitter matter; right?

18 A. No. It was a -- it was a different focus.
19 Right? Twitter was a different type of analysis, I
20 think, than what's covered here. This is going
21 specifically to disclosure in either an S4 or a proxy
22 statement.

23 And keep in mind, too, in Twitter, I was
24 constrained on what I could do given what the judge's
25 order were. And so it's little bit of a different

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1 set of circumstances.

2 Q. Okay. So my question is just -- it's just a
3 general question. Why did you believe an empirical
4 study was necessary for offering your opinions?

5 A. So in this particular area, the -- we're
6 going to the question of the way in which target
7 prepared financials are presented. And the
8 presentation itself in terms of, you know, what
9 health warnings accompany the target prepared
10 financials, the number of times, how common is it for
11 there to be target prepared financials.

12 Well, these are things that you can readily
13 assess. And so rather than providing my sense of
14 these things, we decided it made sense to provide an
15 empirical analysis, which, I suppose, not
16 surprisingly was consistent with my sense of these
17 things. But it was done to really check the market
18 to see whether or not what we thought was the case
19 was, in fact, the case.

20 Q. Okay. And you used the phrase this is
21 something that can be -- that somebody can readily
22 assess.

23 When you use the phrase "readily assess,"
24 what do you mean by that?

25 A. I mean the methodology that appears, again,

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1 beginning on page 18. So these are things that we
2 can take this methodology and we can apply it to the
3 disclosures to reach an empirical result.

4 Q. And you just referred to the disclosures.
5 And when you use that phrase "the disclosures," would
6 it be fair to say that when you use that phrase,
7 you're referring to disclosures that were reviewed
8 and were assessable to the public?

9 A. So we're talking about target prepared
10 projections. That was our focus, target prepared
11 projections. And as I mentioned in the methodology,
12 that appeared in either the S4 or the proxy
13 statement.

14 Q. So I'll ask the question a little bit
15 differently.

16 So is my understanding correct that when
17 you're referring to the disclosures in this concept
18 of readily assessing, you're referring to the fact
19 that you go to the SEC website and pull information
20 off the website that is publicly available?

21 A. Well, the documents are publicly available.
22 Yes.

23 Q. Right. Right. And so when you say "readily
24 assess," is that in reference to the fact that you
25 can go to the SEC's website and pull a series of

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1 documents off the website?

2 A. Well, you can pull a series of documents off
3 the website and then review those documents. Right?
4 That's the -- that's the assessable part.

5 Q. Understood. Now, what I want to ask you is:
6 As part of gathering that material, were there any
7 assumptions that you relied upon in gathering that
8 material?

9 A. So, again, our -- our empirical analysis
10 here was to look at target prepared financials, how
11 they were prepared in terms of the presentation, the
12 disclosure. I mentioned the health warnings a few
13 moments ago.

14 And so we did not have any particular
15 assumptions walking in the door. The methodology
16 lays out what we looked at and how we looked at it.
17 I don't think that reflects assumptions as much as
18 the basis upon which we're presenting the results.

19 Q. Understood. Well, would it not be true that
20 you and your team assumed that the information in the
21 SEC filings was accurate?

22 A. Well, again, we're -- we're focused on what
23 was in the disclosure. Right? And unless you're
24 suggesting to me that people are substituting
25 registration statements or people are substituting

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1 proxy statements, I am assuming yes. To that extent,
2 I'm assuming that the SEC documents are, in fact,
3 what was filed with the SEC.

4 Q. Let me ask the question a little bit
5 differently. You looked at disclosures and various
6 SEC filings for purposes of the empirical study,
7 correct?

8 A. That's correct.

9 Q. And those disclosures that you or your team
10 reviewed, is it not true that you presumed that that
11 information was accurate?

12 A. So you're asking did we assume -- if I
13 understand the question correctly, you're asking did
14 we assume that the people responsible for disclosure
15 didn't lie?

16 Q. No. I'm not saying didn't lie. I'm saying:
17 Did you presume it was accurate?

18 A. I understand that. But I'm saying the only
19 way it wouldn't be accurate is if somebody had not
20 put in an accurate statement, in other words, that
21 they had put in a misstatement.

22 So you're asking did I presume that the
23 people who prepared the documents were not misstating
24 what was in the disclosure. I used the word "lie"
25 for shorthand. We can say misstating what was in the

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1 disclosure.

2 Q. Mm-hmm, understood. But --

3 A. Is that what you're asking?

4 Q. Yeah, that's precisely what I'm asking. You
5 assumed that the disclosures were not misleading.

6 Is that not right?

7 A. So we do assume that the disclosures were an
8 accurate reflection of whatever the parties chose to
9 put into the document.

10 Q. Okay. I'm just going to do a couple more
11 questions. We can take a break.

12 And I understand for purposes of your --
13 your empirical study that you did not include Alta
14 Mesa in the population; correct?

15 A. That's correct.

16 Q. Okay. Can you explain to me why you didn't
17 include Alta Mesa in the population?

18 A. Because this case involves Alta Mesa, so we
19 just thought it made sense to exclude it.

20 Q. Okay. All right. And would you -- well,
21 let me ask it this way. Again, I want to get back to
22 this assumption that the -- that you and your team
23 had, that the disclosures that you assessed were not
24 misleading.

25 Would you not agree with respect to all the

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1 companies in your population, there was no way to
2 really check or control for the fact that one or two,
3 three or four -- it doesn't matter the number -- of
4 those disclosures were not accurate?

5 A. So if I understand correctly, you're asking
6 whether or not the dozens, you know, the large number
7 of -- the large number of deals that we looked at --
8 you're asking did we assume that they were all not
9 misstating what actually occurred.

10 Q. We've already -- we've already crossed that
11 bridge. I think we established that you did assume
12 that the disclosures were not misleading or am I
13 misstating your testimony?

14 A. Well, again, the reason I'm balking with the
15 word "assume" is because we're talking about
16 disclosures that actually appeared in the document.

17 So, again, if what you're asking is did we
18 assume that these were not misstated, then, yes, we
19 are assuming they are not misstating that actually
20 occurred, if that's -- if that's what you're asking.

21 But, clearly, these were disclosures in the
22 document, right, where we checked those. That's not
23 part of the assumption.

24 Q. Well, as part of your empirical analysis,
25 did you do anything to control for the potentiality

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1 that any one or more of those disclosures may be
2 misleading?

3 A. This is why we looked at such a broad sample
4 set. Right? We looked at almost a hundred, if not
5 over a hundred. I'm trying to remember the number.

6 I think -- I think the concern, perhaps --
7 you know, to the extent there might even be a
8 concern. I'm not sure I follow the question. But to
9 the extent there might be a concern, you know, maybe
10 if you were to look at one or two companies, you
11 might be somewhat concerned about just the fact that
12 your -- your group is small, not because I think
13 they're misleading, just because it may not be
14 representative of the market.

15 In our case, we looked at, you know, dozens,
16 over a hundred different SPACs. I would think that
17 would give you a pretty good sense of the market.
18 Unless, using your words, we were to assume that the
19 entire market has decided to misstate disclosures,
20 which I think is one hell of an assumption to make.

21 Q. That's not what I'm -- that's not what I'm
22 asking. I'm just asking you if you did anything to
23 control for the potential that any one of them could
24 have been misleading.

25 A. But that's what I mean by control. What I'm

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1 not -- not specifics.

2 Q. Just to make the record clear and then we'll
3 take a break. As part of your work, did you consider
4 the recent trends in SPAC litigation for purposes of
5 your empirical study?

6 A. I did not.

7 MR. SMITH: All right. Sir, we're going
8 to go ahead and take a break.

9 Let's go off the record.

10 THE VIDEOGRAPHER: The time is
11 10:09 a.m. We're going off the record.

12 (Recess from 10:09 a.m. to 10:29 a.m.)

13 THE VIDEOGRAPHER: The time is
14 10:29 a.m. We're going back on the record.

15 Please proceed, Counsel.

16 BY MR. SMITH:

17 Q. Welcome back, Professor. I just want to ask
18 you a general question regarding the empirical study
19 that you performed.

20 Can you please tell me which opinions rely
21 on that empirical study?

22 A. Well, we have the section Roman numeral V
23 beginning on page 15 describes the -- describes the
24 analysis itself. And if you go to page 86, that's
25 where we include opinion number 1 that refers back to

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1 section V. And that's where the opinion itself is.

2 So that's -- that's the focus of the
3 empirical analysis.

4 Q. So it would be opinion number 1 that's
5 identified in the table of contents, small one,
6 numeral number three in your report, beginning on
7 page 86; correct?

8 A. You know my report better than I do. Hold
9 on.

10 You said Roman numeral III? I'm sorry.

11 Q. I apologize. So if you go to small Roman
12 numeral III, which is in your report, which is a
13 portion of your opinions -- or describes your
14 opinions, at the top of that page, there's a Roman
15 numeral number IX, opinion 1, that begins at 86,
16 right?

17 A. Okay. So I have -- I have Roman numeral IX
18 on page 86. That's the opinion.

19 Q. Correct.

20 A. And you're refer- -- I'm sorry. You were
21 referring to something else earlier in the report.
22 That's the part I'm missing.

23 Q. I'm just trying to confirm that your
24 empirical study supports opinion number 1.

25 A. That's correct.

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1 Q. And it does not support any of the other
2 opinions; is that right?

3 A. That's -- that's correct.

4 Q. I just want to go back -- well, let me ask
5 you to state it.

6 So what was the finding of your empirical
7 study regarding target prepared projections?

8 A. So the results begin on page 22 of the
9 report and we find a few things. They're actually
10 summarized on page 25 of the report. And they're
11 also illustrated in the variation figures. This is
12 paragraph 53 where we ultimately summarize what's
13 picked up earlier in -- in that section.

14 So as Figure 1 shows, a significant number
15 of these facts, over 80 percent, included financial
16 projections. As Figure 2 shows, within that universe
17 of these fact disclosures that includes financial
18 projections, 84 percent included target prepared
19 financial projections.

20 To be clear, that's not to say other things
21 may not be in there, but 84 percent included target
22 prepared financial projections. And as Figure 3
23 shows, within the prepared sample subset, meaning
24 those target prepared financial projections, nearly
25 all of them included cautionary statements.

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1 Q. All right. So I'll go on and use the
2 language of your -- of your opinion. You used the
3 phrase "prepared solely by the target company,"
4 correct?

5 A. Can you point --

6 Q. Yeah.

7 A. -- where you're --

8 Q. Paragraph 51.

9 A. Solely by the target company, that's the
10 language.

11 I -- I would say that within the context,
12 we're talking about solely by the target as opposed
13 to by the sponsor or the SPAC.

14 Q. Understood. Okay. Okay, thank you.

15 So -- so one of the findings as reflected in
16 your report at page 23 is that of the group of SPAC
17 deals in which financial projections were included,
18 you found that 84 percent of that group those
19 financial projections were prepared solely by the
20 target company, correct?

21 A. Well, we're saying in 84 percent there were
22 target prepared financials. So we're not saying that
23 there weren't, perhaps, other things in there as
24 well, but there were in 84 percent target prepared
25 financials -- projections.

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1 Q. Understood. Okay. All right. So I want to
2 go back to this -- this issue that we were speaking
3 about before the break.

4 Did you or any member of your team speak
5 with any employees or executives of any of the
6 companies that you've listed in the population?

7 A. No.

8 Q. Okay. Did you or any member of your team
9 check to see whether any of the companies in your
10 population were involved in litigation?

11 A. No --

12 Q. I'm sorry?

13 A. Involved in litigation? No.

14 Q. Yes, okay. All right. Did you or any
15 member of your team check any of the listed companies
16 in your population to see if they eventually went
17 bankrupt?

18 A. No.

19 Q. I want to ask you some general questions.
20 Please don't take offense at this -- at the line of
21 questioning.

22 But is this the first empirical study that
23 you've done as an expert?

24 A. No.

25 Q. How many empirical studies as an expert have

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1 Q. Welcome back, Professor.

2 I'd like to go to the section of your report
3 where you kind of expound on opinion 1and -- so if
4 you can direct your attention to page 86.

5 A. Okay.

6 Q. And it appears that your explication of the
7 opinion stretches through paragraph 190 on page 87;
8 is that correct?

9 A. As far as what's here, but -- yes. But I'm
10 also referring back to section 5C as well. But, yes.

11 Q. Right. Okay. So can you identify where in
12 this section you point to any of the evidence
13 produced in discovery to support this opinion?

14 A. Whether it was produced -- I assume it was
15 in discovery. Of course, there is it is 14A proxy
16 statement itself, which was the target prepared
17 financial projections in the SRII proxy that this
18 opinion is covering. So that certainly would be -- I
19 assume it was produced. It's a public document that
20 was the basis for part of this opinion.

21 Q. Okay. So other than the proxy itself, can
22 you identify any other evidence that was produced
23 over the course of discovery that you cite to in
24 support of the opinion?

25 A. I'm just going back to review to make sure

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1 I'm not missing anything.

2 No. I think that was the sum of what we
3 looked at in terms of discovery materials for
4 purposes of opinion -- opinion 1.

5 Q. So I just want to walk this through with
6 you.

7 So your empirical study that you conducted
8 set the definition of what you believe to be the
9 custom and practice with regard to target -- target
10 prepared financial projections; is that right?

11 A. It's the evidence of what we understand
12 custom and practice to be. I'm not sure we were
13 setting a definition. But, yeah, it's the empirical
14 results that we looked at and used that as the
15 benchmark, maybe is a better way to think about it,
16 for custom and practice.

17 Q. In other words, the empirical study is the
18 evidentiary base -- or is the base of information
19 that evidences the custom and practice that you so
20 found?

21 A. Yeah. It's -- the empirical analysis is the
22 basis for our determination as set out here on
23 page 86, 87 as to what it is that companies do in
24 de-SPAC transactions with respect to target prepared
25 financial statements. And then we look at that

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1 relative to what was in the SRII proxy and the result
2 is what's here in opinion 1.

3 Q. Another way of saying that is because the
4 words -- or the -- strike that.

5 Because the SRII proxy in this case included
6 language that said that the financial projections
7 were prepared -- prepared by the targets, that is the
8 piece of evidence upon which you say -- that is the
9 only piece of evidence that you base your conclusion
10 that it is consistent with the custom and practice as
11 evidenced by your empirical study?

12 A. No. That's certainly a part of it. But
13 remember the empirical analysis also speaks to the --
14 I think they call them health warnings, the -- the
15 disclosure that relates to meaningful cautionary
16 statements, which is also included, right, in the --
17 the SRII proxy statement as well as what we looked at
18 in the other de-SPAC transactions. So it's not
19 simply those words. It's also the meaningful
20 cautionary language, as well.

21 Q. Let me ask the question a little bit
22 differently.

23 So the only document you've identified that
24 was produced in discovery, the actual proxy itself,
25 that is the single piece of evidence upon which

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1 you're relying to reach the conclusion that SRI's use
2 of target prepared financial projections was
3 consistent with custom and practice as evidenced by
4 the sample de-SPACs and empirical results?

5 MS. BLADOW: Objection. Asked and
6 answered.

7 THE WITNESS: So -- right. We're not --
8 we're looking at the -- the materials in the
9 proxy itself, right, the disclosure in the
10 proxy itself and comparing that to
11 disclosures in other S4s, F4s, 14A proxy
12 statements to reach the conclusion here in
13 opinion 1.

14 BY MR. SMITH:

15 Q. If you can go to your -- excuse me. Go back
16 to appendix C in your report, the list of documents
17 relied upon, please.

18 I want to focus your attention -- focus your
19 attention on the documents you list here that were
20 produced in discovery.

21 The first one is Bates stamped documents.
22 Do you see that?

23 A. Sorry. Is that a heading?

24 Q. It's page 17 of appendix...

25 A. Here it is. Yes.

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1 Q. Can you count the number of pages of Bates
2 stamped documents you listed in this appendix C?

3 A. It's from page 17 to 24.

4 Q. We'll say it's about six to seven pages,
5 correct?

6 A. Six and-a-half; something like that. Yeah,
7 six and a third.

8 Q. None of the materials that you cite, the
9 Bates stamped documents that you cite in appendix C
10 or none of the -- strike that.

11 Isn't it true that you didn't cite to any of
12 these Bates stamped documents in support of opinion
13 1?

14 MS. BLADOW: Objection. Asked and
15 answered.

16 THE WITNESS: I have to go back and
17 check. I just don't remember all the
18 footnotes, but I don't -- off the top of my
19 head, it's not something that I can recall
20 doing, but I'd have had to go back and look
21 at the footnotes.

22 BY MR. SMITH:

23 Q. If you go to page 2, appendix C, there's a
24 listing of depositions here.

25 A. I'm on page 2.

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1 Q. Did you review the entirety of the
2 depositions and the attached exhibits to these
3 depositions?

4 A. I did. Although, some of the review was
5 some months ago, but I did go through these things,
6 yes.

7 Q. And isn't it true that you do not cite to
8 any of these depositions or deposition exhibits in
9 support of opinion number 1?

10 A. Again, I don't recall doing it, but I'd have
11 to go back and check to confirm. I just don't
12 remember what's in the footnotes.

13 Q. But I think you previously answered, as your
14 counsel objected that it was asked and answered, that
15 you could not identify anything other than the proxy
16 itself in terms of documents produced in discovery
17 that you cited in support of opinion 1?

18 MS. BLADOW: Objection.

19 THE WITNESS: And I -- and I certainly
20 said that. I'm saying if you're asking me
21 does this appear anywhere in terms of
22 citations, I would have to go back and check
23 again. I'm not aware of it, but I would
24 want to go back and check. If you'd like, I
25 can check now.

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1 BY MR. SMITH:

2 Q. Yeah, we probably should.

3 Again, the question is with regard to your
4 explication of opinion 1 -- (audio distortion) --
5 page 86.

6 Can you identify anything other than the
7 Silver Run II proxy that you cite to and produce in
8 discovery?

9 A. Let me check.

10 (Witness reviews document.)

11 THE WITNESS: Yeah. I've looked at the
12 footnotes and I've not seen anything from
13 either the deposition list of documents or
14 the Bates stamped list of documents.

15 BY MR. SMITH:

16 Q. Let's shift tact here a little bit.

17 Is there a reason why your report does not
18 acknowledge that Mr. Hackett was a board member of
19 Silver Run II?

20 MS. BLADOW: Objection.

21 THE WITNESS: I do acknowledge that he
22 was a board member.

23 BY MR. SMITH:

24 Q. Is there a reason why your report doesn't
25 mention the fact that he was the acting chairman of

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1 the board?

2 MS. BLADOW: Objection.

3 THE WITNESS: So I know that Professor
4 Badawi references this. I would ask
5 counsel, because I have a basic disagreement
6 with that characterization, that you direct
7 me to what would support the idea that
8 Mr. Hackett was acting chairman of the board
9 as opposed to acting as a chairman of a
10 meeting.

11 BY MR. SMITH:

12 Q. Sure. I understand what you're saying.

13 So, evidently, you're referring to a piece
14 of evidence that Mr. Badawi relied on where it said
15 he was acting as the chairman of the meeting?

16 A. I'm simply responding to -- I'm responding
17 to your question, Mr. Smith.

18 Q. I'm asking you is there a reason why you
19 neglected to mention that they was acting chairman of
20 the board?

21 A. Because --

22 MS. BLADOW: Objection.

23 THE WITNESS: So I noticed that in
24 Professor Badawi's documents. I see nothing
25 that indicates that he was acting chairman

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